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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/660,915 | 09/12/2003 | Kevin Damewood | SMCY-P01-103 | 7338 |
| 28120 | 7590 | 12/16/2004 | EXAMINER | |
| ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 | | | SINGH, SUNIL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3673 | |
| DATE MAILED: 12/16/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,915

Applicant(s)

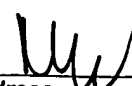
DAMEWOOD, KEVIN

Examiner

Sunil Singh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 4,21,22,25,26 and 32-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-20,23,24 and 27-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/12/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "110" has been used to designate both foundation and mid-sheet. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "365" has been used to designate both flange and sleeping surface. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of

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any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "640" has been used to designate both cover and mattress. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-3, 5-7, 9-11, 23-24 and 27 are rejected under 35 U.S.C. 102(e) or (a) as being anticipated by Dewert (US 2002/0152552).

Dewert '552 discloses an adjustable mattress (see Fig. 6) comprising a first section (6,8,10,12,14) and a second section (6,8,10,12,14), the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; and a first mechanical drive unit (48,50, see paragraph [0049]-[0053] within the adjustable mattress (see Fig. 6), the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section. One or more additional sections (12,14), each additional section forming a portion of the sleeping surface of the adjustable mattress, and each additional section moveable relative to at least one of the first section, the second section, or another one of the one or more additional sections (6,8,10,12,14). One or more padding layer (56). Hinges (see Fig. 1). Foam core (62,68).

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6. Claims 1-3, 7, 11, 23-24 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Dewert (US 6754922).

Dewert '922 discloses an adjustable mattress (see Fig. 6) comprising a first section (80,82) and a second section (80,82), the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; and a first mechanical drive unit (see Fig. 6) within the adjustable mattress (see Fig. 6), the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dewert '552 in view of applicant's admission of prior art (see page 8 of specification).

Dewert '552 discloses the invention substantially as claimed. However, Dewert is silent about the mattress being on a foundation. As correctly stated, applicant admits placing a mattress on a foundation is well known and old in the art. It would have been

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considered obvious to one of ordinary skill in the art to modify Dewert by placing the mattress on a conventional foundation since this is typical.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dewert '922 in view of applicant's admission of prior art (see page 8 of specification).

Dewert '922 discloses the invention substantially as claimed. However, Dewert is silent about the mattress being on a foundation. As correctly stated, applicant admits placing a mattress on a foundation is well known and old in the art. It would have been considered obvious to one of ordinary skill in the art to modify Dewert by placing the mattress on a conventional foundation since this is typical.

10. Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewert '552

Dewert '552 discloses the invention substantially as claimed. However, Dewert is silent about the controller being wireless and programmable. Controllers that are wireless and programmable are old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Dewert to include a wireless programmable controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

11. Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewert '922

Dewert '922 discloses the invention substantially as claimed. However, Dewert is silent about the controller being wireless and programmable. Controllers that are wireless

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and programmable are old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Dewert to include a wireless programmable controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

12. Claims 18-20, 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewert in view of Reeder et al. (US 6460209)

Dewert discloses the invention substantially as claimed. However, Dewert is silent about the first mechanical drive unit comprising a DC motor, worm gear and linkage arms. Reeder et al. discloses mechanical drive units comprising a DC motor, worm gear and linkage arms are conventional (see col. 4 lines 50+). It would have been considered obvious to one of ordinary skill in the art to modify Dewert by substituting the drive unit as taught by Reeder et al. as being well known and old in the art for the drive unit disclosed by Dewert since it is an obvious design choice to substitute equivalent parts for performing equivalent functions.

With regards to claim 31, it would have been considered obvious to one of ordinary skill in the art to modify Dewert to include a wireless controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

13. Claims 5,6,9,10,18-20, 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewert '922 in view of Dewert '552

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With regards to claims 5,6,9,10,18-20, and 28-31, the examiner is considering (Figs. 1-5) of Dewert '922 to disclose the invention substantially as claimed. However, Dewert '922 is silent about his adjustable supporting device being enclosed by mattress means. Dewert '522 teaches to enclose an adjustable supporting device by mattress means (see Fig. 6). It would have been considered obvious to one of ordinary skill in the art to modify Dewert '922 by enclosing his adjustable supporting device by a mattress means as taught by Dewert '552 since such a modification allows for a thinner adjustable bed to be constructed. Furthermore, it is aesthetically pleasing.

With regards to claim 31, it would have been considered obvious to one of ordinary skill in the art to modify Dewert '922 to include a wireless controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (703) 308-4024. The examiner can normally be reached on Monday through Friday 8:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh
Primary Examiner
Art Unit 3673



SS *SS*

12/10/04